IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No. 90 of 2001

Date of decision: 20.7. 2007

Sukhdev Chand **Petitioner**

Versus

State of H.P. **Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Pt. Om Parkash Sharma, Advocate

For the Respondent: Mr. . J.S.Guleria, Law Officer.

Deepak Gupta, J. (Oral)

This revision petition has been filed against the judgment of learned Sessions Judge, Una in Criminal Appeal No. 24/1999, decided on 4.7.2001 whereby, he has upheld the judgment of the Chief Judicial Magistrate, Una in Criminal Complaint No. 61-1-1997, decided on 21.8.1999 whereby the petitioner-accused has been convicted for having committed an offence punishable under Section 27(B) (ii) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act) and sentenced him to undergo simple imprisonment for one year and to pay fine of Rs. 5,000/- and in default of payment of fine to

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

further undergo simple imprisonment for 6 months. The charge against the petitioner-accused in the present case is that he is not a qualified doctor and does not fall within the definition of registered medical practitioner under Rule 2 (ee) of the Drugs and Cosmetics Rules (Rules for short) and, therefore, he had no authority to sell or prescribe any drug.

A complaint was filed by the Drugs Inspector against the accused for violation of Section 18 (c)of the Act which reads as follows:-

> "**18. Prohibition of manufacture and sale of certain drugs and cosmetics.**- From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-
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> (b) x x x x x x x x x x x x x x x x x x x x
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> (c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale or distribute any drug or cosmetic, except under and in accordance wit the conditions of, a licence issued for such purpose under this Chapter:
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> Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

> Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality."

According to the prosecution the petitioner is a quack and has no qualification entitling him to prescribe, distribute or stock allopathic medicines. On 30.5.1997 the complainant visited the premises of the respondent-accused where he is running his clinic and asked him to produce his degree or diploma authorizing him to practice modern system of medicines. The respondent-accused produced a registration with the Indian Board of Alternative Medicines with its registered office at 80 Chowringee road, Calcutta.

Section 2(ee) of the Rules framed under the Act reads as follows:-

> "**2. Definitions.**-In these Rules, unless there is anything repugnant in the subject or context-
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(ee) “Registered medical practitioner” means a person-

(i) holding a qualification granted by an authority specified or notified under section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956); or

(ii) registered or eligible for registration in a medical register of a State meant for the registration of persons practicing the modern scientific system of medicine excluding the Homeopathic system of medicine; or

(iii) registered in a medical register other than a register for the registration of Homeopathic practitioners of a State, who although not falling within sub-clause (i) or sub-clause (ii) is declared by a general or special order made by the State Government in this behalf as a person practicing the modern scientific system of medicine for the purposes of this Act; or

(iv) registered or eligible for registration in the register of dentists for a State under the Dentists Act, 1948 or

(v) who is engaged in the practice of veterinary medicine and who possesses qualifications approved by the State Government;

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There is no manner of doubt that it is only a registered medical practitioner who can stock, sale or exhibit for sale the drugs falling within the ambit of Drugs Act, 1940. It is apparent that the degree obtained by the petitioner-accused does not fall within the meaning of Drugs Rules. It is, therefore, obvious that he does not have any valid licence to practice modern system of medicine or to prescribe such medicines.

Learned counsel for the petitioner-accused submits that even if it be held that the petitioner was not entitled to prescribe or stock such medicine, it was further the duty of the prosecution to prove that the petitioner-accused had in fact violated the provisions of Section 18 (c)of the Act.

There can be no dispute with the preposition that not only has it to be shown that the petitioner-accused was not entitled to practice and to stock the medicines, but also to prove that he in fact stocked and sold such medicines and thereby committed an offence

under Section 18(c). It was incumbent upon the prosecution to lead evidence and prove that the petitioner-accused had in fact either manufactured or put up for sale, distribution or had stocked or exhibited or offered for sale any drug or cosmetic falling within the perview of the Act. Both the courts below have not gone into this aspect of the matter. They have convicted the accused only on the ground that he did not have a valid license to practice modern medicine. Both the courts below have been greatly influenced by this fact while convicting the accused. However, this was not the charge levelled against him in these proceedings. The charge levelled against him was that he had violated Section 18(c) quoted hereinabove.

To prove this charge, the complainant, Drugs Inspector had appeared as his own witness and according to him he had seized a large quantity of medicines vide form Ex. PW-1/B and the medicines were sealed in a packet, Ex.PW-1/C. According to him this process of seizure and sealing was done in the presence of witnesses Hoshiar Singh and Mohinder Singh. In cross examination a suggestion was put to him that no medicines have been seized from the shop of the petitioner-accused. He further submits that he had

associated independent witnesses PW-2 and PW-3 who were present at the spot. He admits that he had not given his own search to the witnesses. A suggestion has been put to him that the petitioner was not present on the spot which he has denied, though he further states that after some time the petitioner-accused ran away. He states that he had seized the medicines and sealed the same in the presence of the witnesses and the petitioner-accused. He has denied the suggestion that he had not taken any medicine in possession at the spot.

PW-2 Hoshiar Singh, the independent witness, has only partly supported the prosecution case. He has stated that the accused does practice as a doctor. According to him about 1½-2 years back the Drugs Inspector had called him to the shop of the petitioner-accused and he, the witness, was asked to sign Ex.PW-1/B. He, however, submits that this box had been sealed prior to his reaching the shop. In cross examination he has stated that when he was called, the Drugs Inspector was already sitting in the shop of the petitioner-accused and he had already completed the process of sealing the box and in his presence no medicines were seized or sealed.

As far as PW-3 is concerned, he only states that he was asked to thumb mark Ex.PW-1/C. He in examination in chief has stated that in his presence nothing happened and the box Ex. PW-1/C had been prepared before he reached the spot.

Surprisingly, though both these witnesses had not supported the prosecution case and even in examination in chief had clearly stated that no medicines were seized or sealed in their presence, no effort was made by the prosecution to have them declared hostile or to cross examine them. When the prosecution witnesses had in examination in chief not supported the prosecution, it was the duty of the prosecutor to ask the court to declare them hostile and cross examine them. When the prosecutor chose not to do so, the only inference which can be drawn is that he admitted and accepted the statement made by the witnesses in the examination in chief. If the statement of these two witnesses are accepted to be correct, as they have to be, for lack of cross examination, it is clear that no process of seizing or sealing medicines took place in their presence.

Therefore, though I am clearly of the view that the petitioner-accused had no right to practice modern system of medicine and I am also clearly of the view that he did not fall within the definition of registered medical practitioner as given in Rule 2 (ee) of the Drug Rues, the prosecution has miserably failed to prove the fact that the petitioner had violated the provisions of Section 18(c) of the Act. The prosecution has failed to prove that the petitioner had either exhibited, sealed, stocked or offered for sale any medicine.

Keeping in view the above discussion, I am of the considered opinion that both the courts below committed a grave error in convicting the petitioner-accused only on the ground that he was not authorized to practice in the modern scientific system of medicines. The petitioner-accused is, therefore, acquitted of the offence for which he was charged and the conviction and sentence passed against him is set aside. The bail bonds of the petitioner-accused are discharged. It is, however, made clear that the petitioner-accused is not entitled to practice the modern system of medicine and if he does so, he may be dealt with in accordance with the relevant law.

July 20, 2007(K) (Deepak Gupta), J.